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Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 100.

A. J. KIZER, PLAINTIFF IN ERROR,

vs.

TEXARKANA AND FORT SMITH RAILWAY CO.,
DEFENDANT IN ERROR.

SUPPLEMENTAL BRIEF OF DEFENDANT IN ERROR.

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IN THE

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In the hurried preparation of the main brief one of the most important points affecting the jurisdiction of this court was overlooked and omitted. It is this:

The court below sustained the validity of the interstate-commerce law enacted by Congress. The only ground upon which the plaintiff in error bases his right to have the decision of the supreme court of Arkansas reviewed by this court is "that in this case is involved and actually was raised and decided a Federal question solely, to wit, the construction of the Interstate Commerce Commission act and of sections 1, 2 and 3 thereof, and the decision of this court is adverse to this plaintiff" (Transcript, p. 3).

It will be seen that the defendant in error claimed that the contract sought to be enforced was null and void because prohibited by sections 1, 2, and 3 of the interstate-commerce act. In other words, the defendant claimed the right to disregard said contract because under the terms of the said act of Congress the same was null and void, and the supreme court of Arkansas maintained that position of defendant.

The right to review the decision of the State court, if any there be, must be found under section 709, Revised Statutes of the United States. That section provides as follows:

"A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision is against their validity * * * may be re-examined and reversed or affirmed in the Supreme Court of the United States."

This court held in Missouri *vs.* Andriano, 138 U. S., p. 496, that when a decision of a State court is in favor of a right or privilege claimed under a statute of the United States this court has no jurisdiction to review it. This language is used in the opinion: "While there is some force in the argument that the right of review in cases involving the construction of a Federal statute should be mutual the act limits such right to cases where the State court has decided *against* the title, right, priviledge or immunity set up or claimed under the statute." "The object of the present judiciary act," says the court, "was not to give a right of review whenever the validity of an act of Congress was drawn in question, but to prevent the courts of the several States from impairing or

frittering away the authority of the Federal Government by giving a construction to its statutes adverse to such authority." This case we regard as conclusive of the question of jurisdiction of this court over this case.

Respectfully,

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